



Town of Wilmington

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August 16, 2006

Ms. Andrea Nixon, Clerk
Cable Television Division
One South Station
Boston, MA 02110

Re: CTV 06-1, Comments of the Town of Wilmington

Dear Ms. Nixon:

The following comments are presented at today's hearing on behalf of the Wilmington Board of Selectmen, the Town Manager Michael A. Caira and the Cable T.V. Advisory Task Force for entry into the record in CTV 06-1, Notice of Public Hearing and Request for Comment by the DTE – Cable Television Division on Proposed Amendments to Rules and Regulations Governing the Cable Television Licensing.

The proposed 90-day timeframe for issuance of a new cable license is patently unrealistic and creates insurmountable advantages to the cable applicant at the expense of the Issuing Authority and the citizens that they represent. The opportunity for the public to offer reasoned and articulate comments about the merits of an application for a new license would be severely extinguished due to the 60-day time constraint for holding a public hearing and due to limiting discussions to the "qualifications" as contained in the application.

In many communities, including Wilmington, the Board of Selectmen as Issuing Authority, appoint a cable committee to investigate the details of an application for a cable license and advise them as to the action(s) to be taken. In fact, cable committees are provided for as part of the Cable Television Division regulations. Wilmington's Cable T.V. Advisory Task Force is comprised of volunteers most of whom are not immersed in the complexities of cable matters on a daily basis and all of whom have commitments to their professions and their families amongst other things. It will not be possible for Wilmington's Cable Task Force, and I suspected most similarly constituted groups, to have adequate time individually to review such applications and collectively to meet in accordance with the "Open Meeting Law" requirements to discuss such applications, obtain answers from the applicant to questions that are raised and to educate the residents of the community about the implications of the application so that those residents can provide valuable and intelligent comments during the public hearing.

"Assessment of the applicant qualifications shall be limited to the information provided in the application on file, any amendments to such application, oral testimony given during the hearing and other relevant information included in the hearing record." This provision suggests that the applicant can not be

compelled to provide specific information to establish their track record for providing similar service, their financial capabilities to undertake such a service or any other indicators of future success. The assessment is confined to the information that the applicant deems appropriate to provide in the application or to offer during the public hearing.

Under the terms of Verizon's proposed changes there is minimal time to negotiate over the terms of a new license and no reference in their proposal to such negotiations. Presumably negotiations can not begin until the Issuing Authority or their cable committee has had an opportunity to adequately review the application to gain a reasonable understanding of the information and to obtain answers to questions about the application. The time crunch will only be exacerbated if the applicant fails to provide sufficient clarity or an adequate level of information in the application. Even if negotiations were started prior to the public hearing the 90-day timeframe suggests that negotiations must be completed within perhaps a month to give the volunteers on the Cable Task Force time to then meet in public session to prepare their recommendation(s) and then send their recommendation(s) to the Board of Selectmen for consideration at one of their posted meetings. Given the complexities of the cable license it is not unreasonable to expect the Selectmen to receive the recommendation(s) at one meeting and to take them under advisement for consideration and a final decision at a subsequent Board meeting. The Selectmen customarily meet twice per month.

Given the time commitments of the principle negotiators to other issues they are not likely to be able to meet more than once or twice over the course of a four to six week period to discuss the terms of the license. I am unaware of any negotiations involving a potential 10 or 15 year time commitment with comparably complex issues like level-playing field, public access and institutional networks that can be consummated by a government entity at the local or state level in just one or two meeting sessions.

In fact, the Cable Television Division's own records show that the existing regulations, at 207 CMR 3.00 work just fine. About 15 communities in the state licensed RCN-BecoCom under the current regulatory scheme in a timely and reasonable manner. Verizon's suggestions that municipalities are "barriers to entry" under the existing licensing scheme are simply not true. Many communities offered to grant Verizon a license with the same terms and conditions as those granted to Comcast and RCN. Verizon instead flatly and categorically refused to agree to such terms and conditions, stating that Verizon had to use its own license format and had its own understanding of the dictates of level-playing field. Is it fair and reasonable to summarily exempt Verizon or any other applicant seeking a cable license from the terms that existing licensees are operating under?

The regulatory changes proposed by Verizon will drastically undermine the strong public policy mandate that municipalities engage in sound procurement practices with the public interest in mind. Massachusetts General Laws chapter 30B, chapter 7 and chapter 149, for example, all address the responsibility of the municipality to sell assets, purchase goods and services and engage in public construction wisely. Public rights-of-way are assets the use of which municipalities may grant for specific purposes. Public policy suggests that such assets should not be simply given away for ten or fifteen years without due consideration. Similarly consideration of a cable license amounts to procuring a service that can be made available to the residents of that community. The Issuing Authority has a responsibility to engage in a reasoned, deliberative and good faith effort to establish whether the applicant has the capability of providing the desired service.

Finally, these proposed changes are unnecessarily. The existing regulatory scheme is not broken. If Verizon wishes to engage in reasonable discussions with Issuing Authorities including discussions about

the implications of their entry into the cable market with existing licensed cable providers then they will obtain cable licenses within a reasonable timeframe. It would be far more profitable for Verizon to focus its time and resources on engaging in good faith negotiations to attain fair licenses from municipalities rather than trying to change the rules in midstream.

Thank you for your careful consideration of these comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jeffrey M. Hull", is written over a light gray rectangular background.

Jeffrey M. Hull

Assistant Town Manager

JMH

cc: Board of Selectmen
Michael A. Caira, Town Manager
Cable T.V. Advisory Task Force
Peter Epstein, Esq. Cable Counsel